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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 29, 1996

VIA OVERNIGHT

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC 96-182; CC Docket No. 96-98
DOJ File No. 860-105-GPO0099-96

Greetings:

Enclosed for filing are the original and 16 copies of the Reply Comments of the Oregon Public Utility Commission in the above captioned docket.

Sincerely,

Benny Won

W. Benny Won
Assistant Attorney General
Public Utility Section

tjh/WBW0538.LET
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS OF THE

OREGON PUBLIC UTILITY COMMISSION

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Table of Contents

Executive Summary

The Oregon Public Utility Commission (OrPUC) believes that its state certification procedures do not act as barriers to entry. We continue to believe that the Telecommunications Act of 1996 (the 1996 Act) gives states jurisdiction over issues related to interconnection, unbundling, and the development of competition, except for those areas in which the FCC has specifically been delegated authority. In particular, we respond to comments about setting pricing rules, arbitration procedures, LEC withdrawal of services, and U S WEST's concerns about recent state ratemaking decisions.

States have made much more progress with respect to encouraging competitive markets for local exchange service than the FCC has given them credit for. The FCC should set rules only in the areas in which they are authorized to do so, and let states continue unimpeded in their quest for competition in local exchange communications markets.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

In the Matter of	)	FCC 96-182
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
	)	
Provisions in the Telecommunications Act	)	
	)	
of 1996.	)	

REPLY COMMENTS OF THE OREGON PUBLIC UTILITY COMMISSION

The Oregon Public Utility Commission (OrPUC) has reviewed the initial comments of many of the parties in this proceeding. We submit the following reply comments.

1. State certification procedures are not a barrier to entry. (Paragraph 22 of the NPRM)

In its initial comments, the Consumer Federation of America suggests that state certification procedures are a barrier to entry. They present no concrete examples of how certification procedures have acted as a barrier to entry in any state. We believe that

Oregon's certification procedure is not a barrier to entry, but does act to protect consumers from companies that are unable, for whatever reason, to deliver what they promise to consumers.

Oregon has been certifying competitive carriers ever since its competitive provider program began. See Oregon Revised Statutes (ORS) 759.020. It now has about 350 competitors providing various services to consumers. Three of these have been certified to provide local exchange service. See ORS 759.050. An additional eight applications to provide local exchange service are pending. If an application is not protested, an applicant can be approved in one to two months. Applications that are protested will take longer, but since we have already held extensive hearings to develop policy in this area, we anticipate that the certification process will take less time in the future than it did for the first three applicants. The sheer number of applications that have been approved, in a relatively small state, is a testament to the fact that Oregon's certification process is not a barrier to entry. See also the 1996 Act, sections 253(b) and 261(b).

2. This is not the proper forum in which to address U S WEST's unhappiness with recent state regulatory decisions. (Paragraphs 184-188 of the NPRM)

U S WEST expresses concern about a recent Washington Utilities and Transportation Commission decision (Initial Comments, page 9), which, it claims, sets the cost of local service too low. It is not surprising that a regulated company and a state commission disagree in this way, since, in most rate filings with state commissions, the

company requests that rates be set at a certain level, and the state commission sets a lower rate level than the one requested. The OrPUC staff has a similar concern about U S WEST's rate levels, and is currently reviewing the matter. The FCC should not interfere in our state ratemaking proceedings simply because a company believes that its rates have been computed incorrectly. There are appropriate procedures to follow when a company wishes to appeal a state commission decision. Using this docket is not one of them.

U S WEST also expressed concern about allocating revenues from Yellow Pages to the regulated company (Initial Comments, page 9). Contrary to U S WEST, Inc.'s suggestion, the FCC should not adopt any rule that preempts states from imputing directory advertising revenues from the incumbent LEC's non-regulated affiliate to the LEC's regulated telecommunications operations. (Paragraphs 184-188 of the NPRM)

Prior to the breakup of AT&T in 1984, the local Bell telephone companies published alphabetical and classified telephone directories (white and yellow pages) and distributed them within their service territories. The relationship between telephone service and Yellow Pages advertising in the directories is symbiotic. The Yellow Pages would be of no value if the telephone network did not exist. The presence of telephone customers, and the use of the local telephone company's name and logo in directories, increases the value of Yellow Pages advertising. See, e.g., Mountain States Tel. & Tel. v. PUC, 763 P2d 1020, 1027 (Colo. 1988). Thus, the value of the directories is connected directly to the regulated operations of the telephone company. Accordingly, the publication and distribution of these directories has been part of the local telephone

company's service obligations, and the revenues from directory publishing and advertising have been used to defray the utility's revenue requirement and maintain affordable local telephone rates.

The AT&T divestiture resulted in directory operations remaining with the local telephone companies. United States v. American Tel. and Tel. Co., 552 F Supp. 131, 194 (D.D.C. 1982). However, since that time, some of the Bell operating companies, including U S WEST Communications Company, have transferred their directory operations to non-regulated affiliates in an attempt to divert the revenues and profits from these operations to their stockholders rather than to their ratepayers. The states have opposed such attempts to improperly appropriate these assets of the regulated telephone companies and transfer them to non-regulated affiliates. See, e.g., OrPUC Order Nos. 89-1044 (Aug. 4, 1989) and 90-1457 (Sept. 27, 1990), copies of which are attached hereto as Attachments A and B, respectively.

Now, U S WEST, Inc., suggests that the FCC adopt a rule that preempts "[s]tate imputations of revenues and costs from non-carrier activities (e.g., Directory Advertising) * * *," claiming that the utility should be allowed to divert the revenues and profits of its directory operations from its ratepayers to its stockholders for the purported purpose of helping potential competitors compete in local telecommunication service markets. (Comments of U S WEST, Inc., page 9 (May 16, 1996).) U S WEST's suggestion was rejected recently by the Washington Utilities and Transportation Commission, which stated:

> The Company argues that it is inappropriate to subsidize exchange rates in a currently competitive market, and that the subsidy proposed by staff and Public Counsel/TRACER will stifle any potential competition. * * * We note [Public Counsel witness] Mr. Brosch's comment that no competitor for local exchange service has ever complained about imputation. We find that imputation is not shown to affect adversely any competition for local exchange service, although we commend USWC for being an advocate on behalf of potential competition. We reiterate that in any event we do not attribute imputed revenues to any customer class.
>
> In making this decision, we also consider the unchallenged fact that the vast majority of USWC's 15 jurisdictions also impute directory revenues. We note USWC's concession on brief that the matter was decided in a prior order. We note (1) Mr. Brosch's testimony that U S WEST Direct grossed approximately a billion dollars and earned a return of 205% in 1994, (2) his contention that for Washington operations it earned 229%, and (3) his contention that U S WEST Direct's return on equity has exceeded 150% every year since 1989, when publisher fees ended. We find that the segregated U S WEST Direct operation did in fact earn substantially more than the authorized utility rate of return on its investment.
>
> We note that an integrated operation would consider those revenues from ratepayers as part of its operating income. Divesting that operation therefore hurts ratepayers substantially, and should not be done unless protections are in place for ratepayers. Here, imputation provides that protection.
>
> Another analysis supports imputation, as well. The divestiture of a money-producing element of integrated operations so closely related to service without a return benefit appears to have been manifestly imprudent. See, WUTC v. Puget Sound Power & Light Co., Docket Nos. UE-920433/920499/921262 (Consolidated), 19th Supp. Order (Sept., 1994). This adjustment could also be supported on the basis of a prudence analysis.

Washington Utilities and Transportation Commission v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order, pages 40-41 (April 11, 1996).

To OrPUC's knowledge, no competitor for local exchange telecommunications service has ever complained that OrPUC's imputation of directory revenues and profits to

incumbent LECs is anti-competitive. Such imputation is not inconsistent with the 1996 Act. See, e. g., the 1996 Act, sections 253(b), 254(i), 261(b), 601(c)(1).

Moreover, in Oregon, U S WEST agreed "not to challenge, through legislation or litigation, the Public Utility Commission of Oregon's * * * authority to impute 'yellow pages' telephone directory revenues for ratemaking purposes * * * during the term of the Alternative Form of Regulation Plan established in this Stipulation * * * and for five years after the end of the Plan." (stipulation filed in OrPUC Docket No. UT 80, page 1). This Plan was terminated by OrPUC effective May 1, 1996 (OrPUC Order No. 96-107 April 24, 1996).

3. Many states not listed among those the FCC chose to recognize as having made progress toward encouraging competitive markets have now come forth describing the considerable progress they have made in this area. (Paragraphs 28-29 of the NPRM)

In our initial comments, we listed several states that had approved applications for local exchange service, which should be included in the list of states making progress toward competition. Several additional states have come forward in their initial comments in this proceeding, detailing progress that was ignored in the NPRM (page 4). These include Alabama, Idaho, Indiana, Missouri, Montana, New Hampshire, New Mexico, Oklahoma, South Dakota, Utah, Vermont, West Virginia, and Wyoming, all of whom made electronic filings in this docket. A rulemaking to implement the 1996 Act has begun

in Alaska, according to information on its Web page. Minnesota is considering three filings requesting approval to provide local exchange service. On May 23, 1996, the governor of Hawaii signed into law two administrative rules consistent with the 1996 Act that cover competition in the local exchange. Between the states mentioned in the NPRM and the states about which we now have more information, over 90 percent of the population in the United States lives in states where competitive local exchange service is actively being considered. While we have no information ourselves about the 10 states not included here, it is likely that they, too, have taken some action either on their own or as a result of the passage of the Act of 1996.

4. There cannot be an adequate record in this proceeding to make detailed decisions about pricing, or about most of the issues raised in the NPRM. (Section II. A. of the NPRM)

We have already commented that specific rules in most areas are inappropriate both because the FCC does not have the jurisdiction to issue them, and because it would be poor public policy. If the FCC decides to adopt general guidelines to assist the states, the guidelines would have to be advisory only, and not mandatory. Pactel supports such an approach. Citizens Utilities supports principle-driven guidelines rather than preemptive ones (page 3). Other commenters, e.g., CFA, support more specific rules, especially in the area of pricing. Many commenters have suggested pricing models that could be used, including the Hatfield Model, the Benchmark Cost Model, the Efficient Component

Pricing Rule, and the Direct Cost of Supply Model. At least one commenter on each of these models has pointed out flaws. A model that works well in one situation may perform very poorly in another. The situations in which a given model performs poorly are likely to have some similarity - e.g., the Benchmark Cost Model performs poorly for small, high-cost companies. It underestimates their costs, so reliance on it for pricing purposes would put them out of business. So, if the FCC were to select one of these models and attempt to make it the national model, it is likely that one or more types of companies would be systematically put at a disadvantage. This outcome is clearly undesirable, and demonstrates the futility of attempting to set national pricing rules.

OrPUC's proceeding to develop pricing principles lasted several years. Cost models are typically a source of great contention in rate cases, involving complex testimony, cross-examination, and intense scrutiny by the parties. The FCC cannot reasonably perform this task in this short notice and comment period. Congress was wise, indeed, to grant all authority over pricing to the states, who are much more capable of taking into account company differences in costs and cost structure than a national model ever could be. See Paragraphs 117 ff of the NPRM.

While we do not believe that the FCC has the authority to adopt pricing principles for states to use, we offer our own pricing principles here as one set that states may wish to consider as an option. The costs in the principles are forward-looking costs. OrPUC's pricing principles, adopted in Order 93-1118, are:

1. **LONG RUN** Long Run implies a period long enough that all inputs are avoidable.
2. **LEAST COST TECHNOLOGY** Long Run Incremental Cost (LRIC) estimates should reflect the overall least-cost technology for the network.

3. **COST CAUSATION** Cost will be associated with a building block or group of building blocks to the extent costs are incurred in offering the service in general (both new and existing services) or providing additional service. Any difference in cost between the overall least-cost technology and the least-cost technology for a major function of the firm should be attributed to the building block or group of building blocks that cause the selection of the overall least-cost technology.
4. **NETWORK CONFIGURATION** The current location of, or planned changes to, existing network *hubs* and *spokes* will be used in cost estimation methods. Additionally, facility cost estimates will be based on a complete replacement assumption, and will reflect the overall least cost alternative as required by Cost Principle number two.
5. **BUILDING BLOCK AND SERVICE COSTS** LRIC estimates will be developed at the building block level. A building block is *the smallest level of network functionality that feasibly may be tariffed and offered as a service. The LRIC of a building block is based on the cost elements associated with network functionality.* The cost of a particular service is determined by combining the appropriate building block costs and all other costs caused by the decision to offer the service (e.g., product management for 800 service).
6. **INCREMENT** The concept of LRIC is based upon an increment that is large enough to capture all relevant changes in the total cost of the firm caused by the decision to offer the service or provide the building block.
7. **FACTORS AND LOADINGS** In order to capture costs associated with the provisioning of a building block, factors and investment loadings should be used when

costs cannot easily be identified directly. Factors and loadings consist of annual cost factors and investment loadings.

It is important to note that these principles were adopted in an environment that recognizes jurisdictional separations. Common costs are not included in the cost estimates developed using the seven cost principles. The OrPUC is currently reviewing the allocation of common costs. We expect to issue an order on that issue in the summer of 1996.

5. LECs should not be allowed to withdraw services when withdrawal would cause disruption to their customers, including their competitors. (Paragraph 175 of the NPRM)

Several parties addressed this issue. Pactel argued that LECs should not be required to provide services that are offered solely for the convenience of their competitors. The U. S. Department of Justice states that LECs should not be allowed to withdraw services on a tactical basis to limit offerings that are economical ways for new entrants to provide service to their customers. Further, it argues that it is appropriate for some services to be "grandfathered", so that existing customers may continue to receive service, but new customers will not be accepted. See Paragraph 175 of the NPRM.

In Oregon, U S WEST attempted to withdraw its existing Centrex service. U S WEST's proposal would have allowed existing customers to keep their service, but limited the additional lines that would be available to the existing customers. No new customers would have been served. The Department of Justice summarizes some of this

activity in a footnote, but the Oregon activity should be further clarified. The OrPUC staff analysis of this proposal indicated that the limitation on new lines proposed for existing customers would eventually have put those existing customers out of business. OrPUC rejected U S WEST's proposal to withdraw this service. States need flexibility to deal with the unique situations that might arise in this area, to ensure that LEC proposals that would disadvantage competitors will not be approved. The many situations that might arise cannot be adequately anticipated and handled by FCC rules.

6. Congress meant for states to have full control over the arbitration procedures they use, and for them to implement section 252 without any rules from the FCC. (Section III. A. of the NPRM)

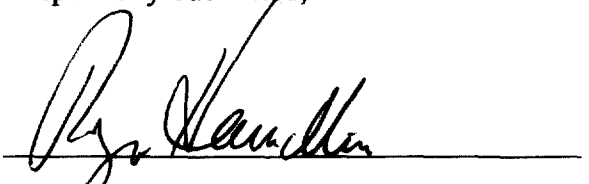
Several parties suggest that the FCC should set certain guidelines for arbitration. For example, the United States Telephone Association lists a number of features of an arbitration that they would like the FCC to adopt (page 115 ff). They would like final offer arbitration to be a standard, and they would like third parties to be excluded from arbitration. See Paragraph 264 ff of the NPRM.

Congress did not delegate authority over state arbitration proceedings to the FCC. The FCC should not set rules to guide state arbitration proceedings. States anticipate that, under the time frame for arbitration provided in section 252(b)(1) of the 1996 Act, arbitration requests will be filed beginning in the latter half of June 1966. FCC rules related to sections 251 and 252 are not due until August 1996. Indeed, it would be

possible for an arbitration proceeding to be completed before the FCC rules are set, if there are only one or two issues about which arbitration is requested. It should be inferred, then, that states have authority over all of the issues they might need to deal with in an arbitration proceeding. It is clear that Congress meant for states to carry out their arbitration proceedings without FCC rules, since they planned for state activities to begin, and possibly even be completed, before the deadline set for the FCC to promulgate its rules. Furthermore, states are in a position to balance the interests of LECs, competitive providers, and telephone customers taking into account the variety of regional circumstances.

We hope that the FCC will take a leadership role in forging a partnership with states to carry out the 1996 Act in a way that encourages competition while taking into account the unique circumstances faced in the diverse regions of this nation.

Respectfully Submitted,



Roger Hamilton, Chairman

Ron Eachus, Commissioner

Joan Smith, Commissioner

ATTACHMENT A

ORDER NO. 89-1044

ENTERED AUG 4 1989

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 54 (Supplemental)

In the Matter of the Investigation Under ORS 756.515 of the Application of PACIFIC NORTHWEST BELL TELEPHONE COMPANY, for approval of agreements with U S WEST Direct, an Affiliated Interest.

ORDER

On January 3, 1989, Pacific Northwest Bell Telephone Company, dba U S WEST Communications (PNB), filed a supplemental application for extension of two of the contracts in this docket with U S WEST Direct. Order No. 88-488 approved PNB contracts for U S WEST Direct to publish directories and place directories in public pay stations except as to the revenues that would be credited to PNB as a result of the publication. The 1987-88 Publishing Agreement expired by its terms on December 31, 1988. This order is issued under ORS 756.515(4).

FINDINGS OF FACT

At the April 17, 1989, public meeting, the Commission's Staff recommended denial of the Publishing Agreement as not being consistent with the public interest and recommended conditional approval for the Public Pay Station Agreement.

The Commission deferred a final decision regarding PNB's request that the extension be approved. The Commission requested counsel's advice about the effect of its action disapproving the extension of the publishing agreement.

On May 26, 1989, PNB attempted to withdraw the letter extending the Publishing Agreement between PNB and U S WEST Direct, leaving the letter extending the Public Pay Station Agreements before the Commission.

Counsel made its report at the May 30, 1989, Commission public meeting.

M. B. Congdon
L. D. Huss
C. L. Best
E. A. Nelson
L. D. McDonald
G. D. Tingey

PENNY = Original

Jurisdiction

PNB is a public utility in Oregon, as defined by ORS 757.005, which provides telecommunications service to or for the public. PNB and U S WEST Direct are affiliated interests under ORS 757.015(3) because U S WEST, Inc., wholly owns the voting securities of U S WEST Communications Group, Inc., which owns PNB. U S WEST, Inc., also wholly owns U S WEST Marketing Resources Group, Inc., which wholly owns U S WEST Direct. An organizational chart showing these relationships is attached.

The Proposal

By letters dated December 12, 1988, PNB and U S WEST Direct attempted to agree between themselves to an extension of the 1987-88 Publishing Agreement. The changes to the 1987-88 Publishing Agreement described in the December 12 letters are that the agreement will be continued on a month-to-month basis, subject to an 18-month notice of cancellation or termination by either party, and that the publishing fees provided for in Exhibit B of the 1987-88 Publishing Agreement will cease.

OPINION

In approving the 1987-88 Publishing Agreement in Order No. 88-488, the Commission determined that the Publishing Agreement is a proposal by PNB to transfer something of value to U S WEST Direct and that, consequently, the transaction is subject to ORS 757.480. ORS 757.480 provides, in pertinent part:

> (1) No public utility doing business in Oregon shall, without first obtaining the Commission's approval of such transaction: (a) Sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility:
>
> * * * *

(2) Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the Commission authorizing the same is void.

The proposed extension of the publishing agreement, just like the publishing agreement involved in Order No. 88-488, constitutes the transfer of intangible assets, namely, the right to publish directories on behalf of PNB and to benefit from the directories' use as an advertising medium, including the ability to use the PNB name, logo, and similar indicia of PNB's reputation in the marketing of the directories. Inasmuch as this transfer was attempted and agreed to without prior Commission approval, this transaction is void under ORS 757.480.

The legal consequences that follow from the fact that the extension of the publishing agreement between PNB and U S WEST Direct is void are:

1. As of January 1, 1989, there is no effective transfer from PNB to U S WEST Direct of the intangible assets relating to directory publishing. PNB, therefore, retains those assets. Consequently, U S WEST Direct has no right as of January 1, 1989: to publish a directory on behalf of PNB; or to use the official directory of the local exchange company as an advertising medium or in any other commercial manner; or to obtain any benefit from PNB's reputation or PNB's status as a local exchange carrier. Nor does U S WEST Direct have the right to utilize the names, addresses, or telephone numbers of PNB local exchange customers for any similar purpose. Therefore, since no publication of this type may be lawfully undertaken by U S WEST Direct, all revenues received as a result of any unlawful publication may be considered revenue to PNB for ratemaking purposes.

2. As a local exchange company in Oregon, PNB still has the obligation to publish directories. Neither the attempted extension of the publishing agreement between PNB and U S WEST Direct, nor the attempted withdrawal of the application for PUC approval of the extension of the publishing agreement, has absolved PNB of the obligation to publish directories.

Since the contract has not been approved for the years after 1988, the letter agreement is void and PNB is directed to terminate its present relationship with U S WEST Direct for directory publication. PNB is further directed to reacquire, on terms approved by the Commission, the directory publishing assets previously transferred to U S WEST Direct through Landmark Publishing Company, pursuant to Commission Order Nos. 84-266 (Commission Docket UP 9) and 84-267 (Commission Docket UI 9). PNB is also directed to resume publishing its directories for intrastate Oregon. To ensure that ratepayers are not harmed, PNB is required to keep an accounting of all expenses incurred in complying with these directives to ensure that these changes take place at PNB's expense and not that of PNB's ratepayers.

From January 1, 1989, and until PNB has reacquired the publishing assets at issue and is publishing its own directories, the Commission will presume that PNB's local exchange revenues include either the entire profits of U S WEST Direct from Oregon related directory publication, or the amount determined attributable to PNB's directory publications in Commission Docket UT 85 as adjusted for inflation, whichever is higher.

Since no publishing agreement has been approved, it is not consistent with the public interest to approve the ancillary Public Pay Station Agreement.

IT IS THEREFORE ORDERED:

1. The Publishing Agreement after 1988 is void under ORS 757.480(2), and Pacific Northwest Bell is directed to terminate its present relationship with U S WEST Direct.

2. Pacific Northwest Bell is further directed to reacquire the directory publishing assets previously transferred to U S WEST Direct through Landmark Publishing Company, pursuant to Commission Order Nos. 84-266 (Commission Docket UP 9) and 84-267 (Commission Docket UI 9).

3. Pacific Northwest Bell is directed to resume publishing its directories for intrastate Oregon and to preserve for its own use all benefits from its operations as a local exchange company, including the right to publish the directory of the company and to use the directory and subscriber lists as an advertising medium.

4. Without prior approval of the Commission, Pacific Northwest Bell shall not sell, transfer or make available its lists of subscribers to any person, including U S WEST Direct. In determining whether to grant such approval, the Commission will consider whether:

   a. The proposed action constitutes the sale or transfer of benefits which inure to Pacific Northwest Bell's operations as a local exchange carrier; and

   b. The proposed sale or transfer would dilute or dissipate the assets of Pacific Northwest Bell in its operations as a local exchange carrier.

5. Pacific Northwest Bell shall keep an accounting of all expenses incurred in complying with these directives and ensure that these changes take place at Pacific Northwest Bell's expense and not that of the ratepayers.

6. Until such time as Pacific Northwest Bell complies with all terms and conditions of this order, Pacific Northwest Bell's recorded local exchange revenues shall include either the entire profits of U S WEST Direct from Oregon related directory publications; or the amount determined attributable to Pacific Northwest Bell's directory publications in Commission Docket UT 85 as adjusted for inflation, whichever is higher.

7. The ancillary Public Pay Station Agreement is disapproved.

Made, entered, and effective AUG 4 1989.

RON EACHUS
Commissioner, Chair

MYRON B. KATZ
Commissioner

NANCY RYLES
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

lh/7207A

A party may request hearing of this order pursuant to ORS 756.515(5). A party may request reconsideration of this order pursuant to ORS 756.561. A party may appeal this order pursuant to ORS 756.580.

lh/7207A

ATTACHMENT B

ORDER NO. 90-1457
ENTERED SEP 27 1990

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 228

In the Matter of the Notice of PACIFIC NORTHWEST BELL TELEPHONE COMPANY dba U S WEST COMMUNICATIONS to abandon Address Telephone Directories (ATD) and Business and Consumer List Products services.	))))))	ORDER

DISPOSITION: PETITION TO ABANDON DENIED

INTRODUCTION

On January 6, 1989, Pacific Northwest Bell Telephone Company, dba U S WEST Communications (PNB) filed a notice of intent to abandon service pursuant to OAR 860-32-020. PNB seeks to abandon its Address Telephone Directory (ATD) service, also known as reverse directories, and business and consumer list products. In *Order No. 89-179 (February 21, 1989)*, the Commission instituted this investigation and ordered PNB not to abandon the provision of address telephone directories and business and consumer list products until specifically authorized by the Commission.

At the April 6, 1989, prehearing conference, PNB requested that the jurisdictional issue be considered separately from the question of whether PNB should be permitted to abandon these services. The Hearings Officer granted the request. PNB and staff filed stipulations of facts and briefs.

In *Order No. 89-1274, (September 28, 1989)*, the Commission found that it had jurisdiction over PNB's proposed abandonment of ATD service and business and consumer list products.

On March 29, 1990, Hearings Officer Leon Hagen heard this matter in Salem, Oregon. The following entered appearances:

For PNB:

Charles L. Best
Attorney
Portland, Oregon

For the Commission's staff:

Keith Kutler
Assistant Attorney General
Salem, Oregon

The parties filed their final briefs on June 4, 1990.

FINDINGS OF FACT

Address Telephone Directory

The Address Telephone Directory, also referred to as a reverse directory, is a printed PNB publication which consists of non-confidential telephone subscriber names, addresses, and telephone numbers listed by street address and telephone number. A "B" precedes business listings. The directory also includes headings that identify buildings, apartments, and mobile home parks. ATD listings are gathered directly from PNB's listing data base. ATD is not listed in the tariff. PNB has two ATDs: the Portland ATD contains approximately 204,000 listings and the Willamette Valley ATD contains approximately 182,000 listings. As of December 30, 1988, 1,737 customers purchased the Portland ATD, and 455 customers purchased the Willamette Valley ATD.

PNB published the first Oregon ATD for Multnomah County in the 1940's for internal use. ATDs were leased to customers on a demand basis. PNB published the first Eugene ATD in 1985 and in September, 1987, it became the Willamette Valley ATD.

PNB obtains the listings only because of its utility function within its service area. Only PNB has the most current data base with the correct telephone numbers available. As customers receive new telephone numbers, they are entered into PNB's data bank.

PNB did not market or publish a 1989 ATD. It supplied the 1988 ATD on request at a discount because the product was dated.

In 1989, U S WEST Marketing Resources Company (MRC), a PNB affiliated company, entered the market for ATDs. Besides MRC, three other companies in Oregon also market a product similar to ATDs: Hill-Donnelly Corp., R. L. Polk and Co., and Cole's Directory. While PNB no longer supplies current ATDs, it will supply the "raw" listings for publication at $.50 per listing and updates for $.60 per listing.

PNB failed to respond adequately to questions concerning PNB's percentage of the ATD market, the date when MRC entered the Oregon market, why MRC entered the market in which PNB already had a presence, how many customers MRC has, MRC's revenues and expenses for the services at issue, and PNB's revenues for the services at issue for 1989.

Business and Consumer List Products

The business and consumer list products provide name, address and telephone number information sorted by zip code, area code and prefix. For business lists only, PNB also provides Standard Industrial Classification on magnetic tape, paper, Cheshire labels and pressure sensitive labels. These products are not listed in the tariff.

There are three basic types of lists: (1) consumer lists which include non-confidential residential subscribers, (2) business lists which contain non-confidential business subscribers, and (3) hot line lists which identify new subscribers to either residential or business non-confidential access line service. PNB has offered these lists since 1985 and they are generally used for direct marketing purposes via mail or telephone. PNB sold 110 Oregon lists in 1988. PNB did not sell any business and consumer list products in 1989.

A PNB affiliated company, U S WEST Marketing Resource Group (MRG), marketed business and consumer list products in 1989. MRG purchases PNB's list updates and resells the lists to affiliated companies and to others.

Several direct marketing, magazine and other companies make their own client lists available for direct marketing purposes.

Financial Impact of Transferring Services from PNB

The following table shows the revenues and expenses for ATD and list services for 1988: